

Commission on Community Investment and Infrastructure

RESOLUTION NO. 29-2013

Adopted June 18, 2013

AUTHORIZING THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE TO BECOME A MEMBER OF THE EMPLOYMENT RISK MANAGEMENT AUTHORITY AND A MEMBER OF THE BAY CITIES JOINT POWERS INSURANCE AUTHORITY AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE JOINT POWERS AGREEMENTS WITH EACH AUTHORITY TO OBTAIN INSURANCE COVERAGE FOR THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE

- WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”), as a local governmental entity separate from the City and County of San Francisco (“City”), obtained employment practices liability coverage from the Employment Risk Management Authority (ERMA) and other insurance coverage from the Bay Cities Joint Powers Insurance Authority (BCJPIA), see e.g. Redevelopment Agency Resolution No. 44-1996 (April 2, 1996) (approving amendments to the joint powers agreement with the BCJPIA); and,
- WHEREAS, ERMA is a self-insured joint powers authority that provides employment practices liability coverage to public entities against claims of potentially unlawful employment practices and discrimination claims and associated claims adjusting, risk management, litigation management actuarial services and other related services; and,
- WHEREAS, BCJPIA provides risk-sharing, pooled liability, workers’ compensation, property; and automobile physical damage coverage to its public entity members as well as other ancillary coverage and services; and,
- WHEREAS, ERMA and BCJPIA are fully accredited by the California Association of Joint Powers Authorities (CAJPA), successfully passing reviews by independent consultants in the areas of accounting, claims adjusting, and actuarial analysis; and,
- WHEREAS, Former redevelopment agencies were dissolved by Assembly Bill No. x1 26 (2011) (“AB 26”) (as upheld by the State Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011)) on February 1, 2012. AB 26 established that the cities, counties, or cities and counties that originally created redevelopment agencies were successor agencies. By law, the City became the successor agency to the former Redevelopment Agency of the City and County of San Francisco (the “Redevelopment Agency”). As a result, ERMA and BCJPIA decided that coverage for the Redevelopment Agency terminated as of February 1,

2012 because the City was not a member of their respective risk pools; and,

WHEREAS, Because ERMA and BCJPIA had terminated its membership, the Office of Community Investment and Infrastructure (OCII), as successor agency to the former redevelopment agency, obtained property insurance and sought other insurance for Fiscal Year 2012-2013 using the services of the San Francisco City Administrator's Office of Risk Management; and,

WHEREAS, In June 2012, the state adopted Assembly Bill No. 1484 ("AB 1484"), which established among other things, that successor agencies are separate entities from their sponsoring entities and the two entities shall not merge, and that neither the assets nor liabilities of the former redevelopment agencies shall transfer to sponsoring cities and counties. Cal. Health & Safety Code § 34173 (g). Because the law now declares OCII to be a separate legal entity from the City, both ERMA and BCJPIA are prepared to approve OCII as a member; and,

WHEREAS, ERMA's Underwriting Committee gave approval at its meeting of May 20, 2013 for OCII to join its risk pool, contingent upon BCJPIA Board's concurrence, and the BCJPIA Board at its June 6, 2013 meeting, directed BCJPIA staff to work with OCII on special provisions to address the potential for eventual dissolution of successor agencies, with OCII's membership in the pool to be considered at a future special Board meeting after terms had been provisionally agreed to; and,

WHEREAS, BCJPIA property insurance premiums are competitive with those obtained through the City and the BCJPIA and ERMA liability insurance quotes are significantly less than preliminary quotes obtained through the City; and,

WHEREAS, ERMA and BCJPIA require the OCII's governing board to adopt a resolution expressing the desire and commitment for OCII to participate in ERMA and BCJPIA for at least a three year participation period and to abide by the provisions of the ERMA and BCJPIA Joint Powers Agreements included as Attachments A and B; and,

WHEREAS, Redevelopment Dissolution Law (AB 26 and AB 1484, as amended), Cal. Health & Safety Code § 34177.3 (b), authorizes successor agencies to create enforceable obligations for winding down of the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance. Enforceable obligations are defined to include "[c]ontracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition, and agreements to purchase or rent office space, equipment and supplies,

and pay-related expenses pursuant to Section 33127 and for carrying insurance pursuant to Section 33134;" Cal. Health & Safety Code § 34171 (d)(1)(F); and,

WHEREAS, Ordinance No.215-12 (Oct. 4, 2012), adopted by the City's Board of Supervisors in its capacity as governing body of the OCII, created and delegated to the Successor Agency Commission (CCII) the authority to "take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that the Commission deems appropriate consistent with the Redevelopment Dissolution Law to comply with such obligations," Section 6 (a) of Ordinance No. 215-12; now, therefore, be it

RESOLVED, That OCII is authorized to become a member of ERMA for at least a three year period for the purpose of obtaining insurance coverage, and the Executive Director is authorized to take any actions necessary that the Executive Director determines is in the best interest of OCII to accomplish that purpose, including executing the ERMA Joint Powers Agreements, substantially in the form of the agreement attached to this Resolution as Attachments A, and making any modification to the agreement that is consistent with the Fiscal Year 2013-2014 budget approved by this Commission and do not materially increase the obligations or liability of OCII; and be it further

RESOLVED, That OCII is authorized to become a member of BCJPIA for at least a three year period for the purpose of obtaining insurance coverage, and the Executive Director is authorized to take any actions necessary that the Executive Director determines is in the best interest of OCII to accomplish that purpose, including executing the BCJPIA Joint Powers Agreements, substantially in the form of the agreement attached to this Resolution as Attachments B, and making any modification to the agreement that is consistent with the Fiscal Year 2013-2014 budget approved by this Commission and do not materially increase the obligations or liability of OCII.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of June 18, 2013.

Natasha Jones
Commission Secretary

Attachment A: Joint Powers Agreement Creating ERMA
Attachment B: Joint Powers Agreement Creating BCJPIA

JOINT POWERS AGREEMENT

CREATING THE

EMPLOYMENT RISK MANAGEMENT AUTHORITY

(ERMA)

**EMPLOYMENT RISK MANAGEMENT AUTHORITY
(ERMA)**

JOINT POWERS AGREEMENT

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**EMPLOYMENT RISK MANAGEMENT AUTHORITY
(ERMA)**

This Agreement is made by and among the public entities listed in Appendix A (Member Entities), all of which are public entities organized and operating under the laws of the State of California and each of which is a local public entity as defined in California Government Code Section 989, as it may be amended from time to time.

RECITALS

1. The following state laws, among others, authorize the *Members* to enter into this *Agreement*:
 - A. Government Code Sections 989 and 990 permitting a local public entity to insure itself against liability and other losses;
 - B. Government Code Section 990.4 permitting local public entity to provide insurance and self-insurance in any desired combination;
 - C. Government Code Section 990.8 permitting two or more local entities to enter into an agreement to jointly fund such expenditures under the agency to Government Code Sections 6500-6515; and
 - D. Government Code Sections 6500-6515 permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them.

2. The governing board of each undersigned agency has determined that it is in its own best interest and in the public interest that this *Agreement* be executed and that it shall participate as a *Member* of the public entity created by this *Agreement*.

NOW, THEREFORE, the undersigned, in consideration of the mutual benefits, promises and agreements set forth below, hereby agree as follows:

ARTICLE I
CREATION OF EMPLOYMENT RISK MANAGEMENT AUTHORITY

Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500), the parties hereto hereby create a public authority, separate and apart from the parties hereto, to be known as the Employment Risk Management Authority, hereinafter referred to as *ERMA*. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of this Authority shall not constitute debts, liabilities, or obligations of the Member Entities.

ARTICLE II
PURPOSES

This *Agreement* is entered into by *Members* pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8, and 6500, et seq., to:

- A. Develop effective risk management programs to reduce the amount and frequency of their losses;
- B. Share the risk of self-insured losses; and
- C. Jointly purchase *excess insurance* and administrative and other services including, but not limited to: claims adjusting, data processing, risk management, litigation management, accounting services, actuarial services, legal services, and training and loss prevention services in connection with any of the *Coverage Programs* for said parties. These purposes shall be accomplished through the exercise of the powers of the *Members* jointly in the creation and operation of *ERMA*.

It is also the purpose of this *Agreement* to provide for the inclusion, at a subsequent date, of such additional public entities organized and existing under the Constitution

or laws of the State of California as may desire to become parties to this *Agreement* and *Members* of *ERMA*, subject to Article XIX, to the extent permitted by law.

It is also the purpose of this *Agreement* to provide for the removal of *Members* for cause or upon request.

ARTICLE III **DEFINITIONS**

Unless the context otherwise requires, the following terms shall be defined as herein stated:

- A. "Agreement" shall mean the joint powers agreement creating the Employment Risk Management Authority.
- B. "Alternate" shall mean the person designated by the *Member* to act as a director of *ERMA* in the absence of the *Representative*. The *Alternate* shall have the same responsibility, power and authority as the *Representative*.
- C. "Assessment" shall mean an amount determined by the *Board of Directors* or Executive Committee to be paid by each *Member* as necessary to meet *ERMA's* obligations.
- D. "ERMA" shall mean the Employment Risk Management Authority created by the *Agreement*.
- E. "Board" or "Board of Directors" shall mean the governing body of *ERMA* composed of a representative of each *Member*.
- F. "Coverage Programs" shall mean coverages provided directly by *ERMA* pursuant to a *Memorandum of Coverage* and/or provided by a purchased coverage.

- G. “Deposit Premium” shall mean the annual dollar amount determined by the *Board of Directors* or Executive Committee which is payable by each *Member* as its established share of the funding required to cover the financial obligations of each *Coverage Program* in which the *Member* participates.
- H. “Excess Insurance” shall mean that commercial insurance or reinsurance purchased by *ERMA* to cover losses in excess of *ERMA's Coverage Program* limits and/or each *Member's Retained Limit*.
- I. “Master Program Document” shall mean the document that sets forth the operations, policies and procedures of a given *Coverage Program*.
- J. “Member” shall mean any organization that is a party to the *Agreement*.
- K. “Memorandum of Coverage” shall mean a document issued by *ERMA* to *Members* specifying the type, amount and conditions of coverage provided to each participant by *ERMA*.
- L. “Program Year” shall mean a period of time determined by the *Board* or Executive Committee, usually 12 months, into which each *Coverage Program* shall be segregated for purposes of accounting and record-keeping.
- M. “Representative” shall mean the person designated by the *Member* to act as a director of *ERMA*. The *Representative* shall have the authority to bind the *Member* on any and all matters relating to the business of *ERMA*.
- N. “Retained Limit” shall mean the amount of a claim which the *Member* must pay or become liable for before *ERMA*, or any applicable purchased *Coverage Program*, is obligated to pay.

ARTICLE IV
PARTIES TO AGREEMENT

Each party to this *Agreement* certifies that it intends to, and does, contract with all other parties who are signatories of this *Agreement* and, in addition, with such other parties as may later be added as parties to, and signatories of, this *Agreement* pursuant to Article XIX. Each party to this *Agreement* also certifies that the deletion of any party from this *Agreement* shall not affect this *Agreement* or the remaining parties' intent to contract as described above with the other parties to the *Agreement* then remaining.

ARTICLE V
TERM OF AGREEMENT

This *Agreement* shall become effective when executed by five or more public entities with a combined payroll of \$500,000,000, or 15,000 full-time equivalent employees, and shall continue in full force until terminated in accordance with Article XXIII.

ARTICLE VI
POWERS OF ERMA

ERMA is authorized, in its own name, to do all acts necessary to fulfill the purposes of this *Agreement* as referred to in Article II, including, but not limited to:

- A. Make and enter into contracts;
- B. Incur debts, liabilities and obligations; but no debt, liability or obligation of *ERMA* is a debt, liability or obligation of any *Member*, except as otherwise provided by Articles XXII and XXIII;

- C. Issue bonds or other instruments of indebtedness;
- D. Acquire, hold or dispose of real and personal property;
- E. Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- F. Sue and be sued in its own name;
- G. Employ agents and employees;
- H. Lease real or personal property, including that of a *Member*;
- I. Receive, collect, invest and disburse monies;
- J. Develop and administer *Coverage Programs* as the *Board* or Executive Committee may approve;
- K. Undertake such other activities as may be necessary to carry out the purposes of this *Agreement*; and
- L. To admit and expel *Members*.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this *Agreement*. ERMA's powers are those which are common to all *Members*.

ARTICLE VII
MEMBERS' POWERS AND RESPONSIBILITIES

A. POWERS

The *Members* shall have the following powers:

1. To approve the *Agreement*;
2. To appoint a *Representative* and *Alternate* to the *Board of Directors*; and
3. To decide if and when the *Agreement* should be terminated.

B. RESPONSIBILITIES

The *Members* shall have the following responsibilities:

1. To cooperate fully with *ERMA* in determining the cause of losses and in the settlement of claims, as defined in the *Memorandum of Coverage*;
2. To comply with the requirements of all *ERMA* training and policy, practice and procedure requirements;
3. To pay *Deposit Premiums* and any adjustments or *Assessments* thereto promptly to *ERMA* when due;
4. To provide *ERMA* with such statistical loss experience data and other information as may be necessary for *ERMA* to carry out the purposes of this *Agreement*;
5. To cooperate with and assist *ERMA* and any insurer or reinsurer, claims adjuster, claims auditor, or legal counsel retained by *ERMA* in all matters relating to this

Agreement and to comply with the Bylaws and all policies and procedures adopted by the *Board* or Executive Committee; and

6. To abide by all decisions of the *Board* or Executive Committee.

ARTICLE VIII
BOARD OF DIRECTORS

There shall be a *Board of Directors* to govern the affairs of *ERMA*. *ERMA's Board* shall be comprised of a *Representative* from each *Member*. Said *Representative*, or *Alternate*, shall have authority to bind the *Member* on all matters pertaining to this *Agreement*.

The powers of the *Board*, unless otherwise delegated pursuant to the Bylaws, shall be all of the powers of *ERMA* not specifically reserved to the *Members* by this *Agreement* and shall include, but not be limited to, Article VI of this *Agreement*.

ARTICLE IX
EXECUTIVE COMMITTEE

The *Board* may create an Executive Committee comprised of members of the *Board* and delegate one or more of its powers to the Executive Committee except those powers not delegable. An appointment to the Executive Committee, if any, is by an election of the *Board of Directors* as addressed in the Bylaws.

ARTICLE X
ELECTION, APPOINTMENT AND DUTIES OF OFFICERS

The election, appointment and duties of officers shall be as set forth in the Bylaws.

ARTICLE XI
MEETINGS AND RECORDS

A. BOARD MEETINGS

The *Board* shall hold at least one regular meeting each fiscal year as defined in Article XII of this *Agreement*. The *Board* shall fix the date, hour and place at which each regular meeting is to be held in accordance with the Bylaws. Special meetings may be called and noticed in accordance with the Bylaws. Written notice of such special meetings shall be delivered to each representative of the *Board* at least twenty-four hours before such meeting.

Each meeting of the *Board*, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act (Section 54950, et. seq. of the Government Code).

B. RECORDS

The Secretary shall keep or have kept minutes of all regular, adjourned regular and special meetings of the *Board*. As soon as possible after each meeting, the Secretary shall forward a copy of the minutes to each representative of the *Board*.

ARTICLE XII
BYLAWS AND ADMINISTRATIVE POLICIES AND PROCEDURES

The *Board* or Executive Committee shall through resolution, adopt, rescind or amend Bylaws and administrative policies and procedures consistent with applicable law and this *Agreement* to govern the day-to-day operations of *ERMA*. Each representative and alternate shall receive a copy of any Bylaws, *Master Program Document*, and administrative policies and procedures developed under this Article.

The Secretary shall promptly send to each representative and alternate each Bylaw amendment, *Master Program Document* change, and administrative policy and procedure change after its adoption by the *Board* or Executive Committee.

ARTICLE XIII

FISCAL YEARS

Fiscal years of *ERMA* shall begin on July 1 and end on June 30.

ARTICLE XIV

BUDGET

The *Board* or Executive Committee shall adopt an annual budget prior to the beginning of each *Program Year*.

ARTICLE XV

FINANCIAL AUDITS

The *Board of Directors* or Executive Committee shall cause a financial audit as set forth in the Bylaws. Such financial audit shall be filed as a public record with each of the *Members* and the State Controller as required by law. All costs of such financial audit shall be paid by *ERMA* and shall be charged against the *Members* in the same manner as other administrative costs.

ARTICLE XVI

ESTABLISHMENT AND ADMINISTRATION OF FUNDS

ERMA shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with all provisions of law relating to the subject, particularly Section 6505 of the California Government Code.

All of the monies of *ERMA* may be invested in common. However, each *Program Year* shall be accounted for separately on a full accrual basis.

The Treasurer shall receive, invest and disburse funds only in accordance with the guidelines and procedures established by the *Board* or Executive Committee in its adopted investment policy which shall be in conformity with applicable law.

ARTICLE XVII
DEPOSIT PREMIUM

The *Deposit Premium* for each *Member* shall be calculated and paid as stated in the Bylaws and *Master Program Document*.

ARTICLE XVIII
ASSESSMENTS AND DIVIDENDS

Assessments and dividends for each *Member* shall be calculated as provided for in the Bylaws and the *Master Program Document*.

ARTICLE XIX
COVERAGE PROGRAMS

The *Board* or Executive Committee may adopt such *Coverage Programs* as it deems necessary to further the goals of its *Members*. All *Coverage Programs* shall be defined by a *Memorandum(s) of Coverage*; insurance policy(ies), or document(s) with a copy provided to each *Member*.

ARTICLE XX
NEW MEMBERS

Admission to *ERMA* requires approval of two-thirds of the *Board* or Executive Committee and is conditioned upon the applicant executing the *Agreement*. Membership shall become effective upon the date established by the *Board* or Executive Committee. Prospective *Members* may apply for participation in *ERMA* as provided for in the Bylaws and *Master Program Document*.

ARTICLE XXI
WITHDRAWAL

Any *Member* of *ERMA* may withdraw from its status as a *Member* and as a party to the *Agreement* only after participation for at least three full *Program Years*. The withdrawal may be effected only at the end of a fiscal year or at any other time which is agreed to by the *Board* or Executive Committee. Any withdrawing *Member* must notify *ERMA* in writing at least six (6) months prior to the end of the fiscal year that it intends to withdraw. A notice of withdrawal shall be final and irreversible upon its receipt by the Authority unless the *Board* or Executive Committee authorizes it to be rescinded by the *Member*.

The withdrawal of any *Member* shall not terminate its responsibility to contribute its share of *Deposit Premiums*, unpaid insurance or *Excess Insurance* premiums, surcharges, administration costs, claims (including unreported claims), or funds to any *Coverage Program* until all claims, or other unpaid liabilities, covering the period of participation by the *Member* in the *Coverage Program* have been finally resolved and a determination of the final amount of payments due by the *Member* or credits to the *Member* has been made by the *Board* or Executive Committee.

After withdrawal, the withdrawing *Member* shall continue to be responsible for any *Assessments* made for years of membership.

ARTICLE XXII

EXPULSION

ERMA may expel any *Member*, with or without cause, as a participant in any *Coverage Program* or as a *Member* of *ERMA* by a two-thirds vote of the *Board* or Executive Committee.

ARTICLE XXIII

EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal or expulsion of any *Member* after the inception of its participation in any *Coverage Program* shall not terminate its responsibility to:

- A. Cooperate fully with *ERMA* in determining the cause of the losses and in the defense or settlement of claims, as defined in the *Memorandum of Coverage*;
- B. Pay any *Assessments* determined by the *Board* or Executive Committee to be due and payable for each *Program Year* in which it participated, as well as *Assessments* for continuing required services in subsequent years until all *Program Years* in which the *Member* participated have been closed;
- C. Provide *ERMA* with such statistical and loss experience data and other information as may be necessary for *ERMA* to carry out the purposes of this *Agreement*; and
- D. Cooperate with and assist *ERMA*, any insurer, claims adjuster or legal counsel retained by *ERMA*, in all matters relating to this *Agreement*.

ARTICLE XXIV

TERMINATION AND DISTRIBUTION

This *Agreement* may be terminated any time during the first three years by the written consent of all *Members*, and thereafter by the written consent of two-thirds of the *Members*. However, this *Agreement* and *ERMA* shall continue to exist for the purpose of disposing of all claims, distributing assets and all other functions necessary to conclude the affairs of *ERMA*.

Upon termination of this *Agreement*, all assets of *ERMA* shall be distributed only among the *Members* that have been participants in the *Coverage Programs*, including any of those *Members* which previously withdrew pursuant to Articles XXI and XXII of this *Agreement*, in accordance with and proportionate to their *Deposit Premiums* and *Assessments* paid during the term of this *Agreement*. The *Board* or Executive Committee shall determine such distribution within six months after the last pending claim or loss covered by this *Agreement* has been finally resolved and there is a reasonable expectation that no new claims will be filed.

The *Board* is vested with all powers of *ERMA* for the purpose of concluding and dissolving the business affairs of *ERMA*. These powers shall include the power to require *Members*, including those which were *Coverage Program* participants at the time the claim arose or at the time the loss was incurred, to pay their share of any *Assessments* deemed necessary by the *Board* or Executive Committee for final disposition of all claims and losses covered by this *Agreement* for any *Program Year*.

ARTICLE XXV

NOTICES

Notices to *Members* under this *Agreement* shall be sufficient if mailed to their respective addresses on file with *ERMA*. Notices to *ERMA* shall be sufficient if mailed to the address of *ERMA* as adopted by the *Board* or Executive Committee.

ARTICLE XXVI
PROHIBITION AGAINST ASSIGNMENT

No *Member* may assign any right, claim or interest it may have under this *Agreement*, and no creditor, assignee or third party beneficiary of any *Member* shall have any right, claim or title to any part, interest, funds, *Deposit Premium* or asset of *ERMA*.

ARTICLE XXVII
AMENDMENTS

This *Agreement* may be amended by written approval of two-thirds (2/3rds) of the *Representatives*. Upon signature of any amendment by two-thirds (2/3rds) of the *Representatives*, any *Member* failing or refusing to abide by such amendment may be expelled in accordance with the provisions of Article XXII.

ARTICLE XXVIII
SEVERABILITY

Should any portion, term, condition or provision of this *Agreement* be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE XXIX
HOLD HARMLESS AND INDEMNIFICATION

Section 895.2 of the California Government Code imposes certain tort liability jointly upon entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the *Members* hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the California Government Code, each assumes the full

liability imposed upon it or any of its officers, agents, or employees by law for injuries caused by a negligent or wrongful act or omission occurring in the performance of this *Agreement* to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve this purpose, each *Member* indemnifies and holds harmless all other *Members* for any loss, cost, or expense that may be imposed upon such other *Member* when solely by virtue of Section 895.2 of the California Code. No *Member* shall be jointly and severally liable for any debts or obligations of *ERMA* or any other *Member*.

ARTICLE XXX
AGREEMENT COMPLETE

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE XXXI
EXECUTION OF COUNTERPARTS

This *Agreement* may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same *Agreement*.

IN WITNESS WHEREOF, the parties hereto have executed the Joint Powers *Agreement* for the pooling of self-insurance as of the _____ day of _____, _____.

Joint Powers Authority or Individual Entity: _____

By: _____

President or Duly Authorized Official

By: _____

Secretary or Clerk

APPENDIX A

MEMBER ENTITIES

1. Bay Cities Joint Powers Insurance Authority
2. Contra Costa County Municipal Risk Management Insurance Authority
3. California Housing Authority Risk Management Agency
4. Central San Joaquin Valley Risk Management Authority
5. Public Agency Risk Sharing Authority of California
6. Small Cities Organized Risk Effort
7. Vector Control Joint Powers Agency
8. City of Vacaville

JOINT POWERS AGREEMENT

CREATING THE

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

adopted

August 13, 1986

amended

March 15, 1996

**JOINT POWERS AGREEMENT
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BAY CITIES JOINT POWERS INSURANCE AUTHORITY
JOINT POWERS AGREEMENT

This Agreement is made by and among the public entities listed in Appendix A (“Member Entities”), all of which are public entities organized and operating under the laws of the State of California and each of which is a local public entity as defined in California Government Code Section 989, as it may be amended from time to time.

RECITALS

- I. The following state laws, among others, authorize the Member Entities to enter into the Bay Cities Joint Powers Insurance Authority Joint Powers Agreement (“Agreement”):
1. Labor Code Section 3700 allowing a local public entity to fund its own workers’ compensation claims;
 2. Government Code Sections 989 and 990 permitting a local public entity to insure itself against liability and other losses;
 3. Government Code Section 990.4 permitting a local public entity to provide insurance and self-insurance in any desired combination;
 4. Government Code Section 990.8 permitting two or more local public entities to enter into an agreement to jointly fund such expenditures under the authority of Government Code Sections 6500-6515; and
 5. Government Code Sections 6500-6515 permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them.
- II. The governing board of each Member Entity has determined that it is in the Member Entity’s best interest and in the public interest that this Agreement be executed and that it shall participate as a member of the public entity created by this Agreement.

Now, therefore, the Member Entities, by, between, and among themselves, in consideration of the mutual benefits, promises, and agreements set forth below, hereby agree as follows:

ARTICLE I

CREATION OF THE “BAY CITIES JOINT POWERS INSURANCE AUTHORITY”

Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of

California (commencing with Section 6500), the Member Entities create a public agency, separate and apart from the Member Entities, to be known as the "Bay Cities Joint Powers Insurance Authority" (the "Authority"). Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of this Authority shall not constitute debts, liabilities, or obligations of the Member Entities.

ARTICLE II

PURPOSES

This Agreement is entered into by Member Entities under California Government Code Sections 990, 990.4, 990.8, and 6500, et. seq. and Labor Code Section 3700 in order to do one or more of the following:

1. Develop effective risk management programs to reduce the amount and frequency of losses;
2. Share the risk of self-insured losses;
3. Jointly purchase insurance either with or without any self-insured portion underlying the insurance, and administrative and other services including, but not limited to claims adjusting, data processing, risk management, loss prevention, accounting services, actuarial services, and legal services in connection with the Programs; and
4. Provide administrative and other services including, but not limited to, claims adjusting, data processing, risk management, loss prevention, accounting services, actuarial services, and legal services in connection with the various programs.

These purposes shall be accomplished through the exercise of the powers of the Member Entities jointly in the creation and operation of the Authority.

It is also the purpose of this Agreement to provide, to the extent permitted by law, procedures for the addition, at subsequent date, of public entities to become parties to this Agreement and members of the Authority, subject to ARTICLE XV, and to provide for the removal of Member Entities for cause or upon request, subject to Articles XVI and XVII.

ARTICLE III

DEFINITIONS

In this Agreement unless the context otherwise requires:

1. **Board or Board of Directors** is the governing body of the Authority constituted as set forth in Article VIII of this Agreement;
2. **Governing Documents** include this Agreement, the Bylaws of the Authority, and any other document stipulated as a Governing Document in the Bylaws.
3. **Member Entity** includes each public agency which is a party to this Agreement.
4. **Program** is the specific method used to provide coverage for a risk, scope, type, or area of insurance services, including, without limitation, the funding of loss reserves, where applicable, as prescribed in a Governing Document for a specific type of coverage, and may encompass such specific areas as comprehensive general liability, property, workers' compensation, or employee benefits.

ARTICLE IV

PARTIES TO THE AGREEMENT

Each Member Entity certifies that it intends to and does contract with every other Member Entity who is a signatory to this Agreement and, in addition, with such other Member Entity as may later be added as a Member Entity under ARTICLE XV. Each Member Entity also certifies that the deletion of any Member Entity from this Agreement does not affect this Agreement nor each Member Entity's intent to contract with the Member Entities then remaining.

ARTICLE V

TERM OF AGREEMENT

This Agreement became effective as of August 15, 1986 and continues in full force until terminated in accordance with ARTICLE XIX.

ARTICLE VI

POWERS OF THE AUTHORITY

The Authority, through its Board of Directors, is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement referred to in ARTICLE II including, but not limited to, each of the following:

1. Make and enter into contracts;
2. Incur debts, liabilities, and obligations; but no debt, liability, or obligation of the

Authority is a debt, liability, or obligation of a Member Entity;

3. Acquire, hold, or dispose of real and personal property;
4. Receive contributions and donations of property, funds, services, and other forms of assistance from any source;
5. Sue and be sued in its own name;
6. Employ agents and employees;
7. Acquire, construct, manage, and maintain buildings;
8. Lease real or personal property, including that of a Member Entity;
9. Receive, collect, invest, and disburse monies;
10. Issue revenue bonds or other forms of indebtedness, as provided under Government Code Sections 6500, et. seq.; and
11. Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

ARTICLE VII

MEMBERSHIP

Membership shall be restricted to public agencies located within the State of California, or such other lesser areas as set forth in the Bylaws.

There shall be two classes of membership defined as follows:

1. Class A Member Entities shall be accepted as such by the Board of Directors and designated as Class A Member Entities on the signature page.
2. Class B Member Entities shall be accepted as such by the Board of Directors and designated as Class B Member Entities on the signature page.

Upon a Member Entity organization or re-organization, including dissolution, merger, or

consolidation, which results in extinguishment or dissolution of the legal existence of a Member Entity, the rights, obligations, and liabilities of such Member Entity under this Agreement, the Bylaws, or other Governing Documents or Resolutions of the Board shall be the rights, obligations, and liabilities of the successor public entity.

ARTICLE VIII

MEMBER ENTITY RESPONSIBILITIES

Each Member Entity, regardless of its class, has the obligations and responsibilities set forth in the Governing Documents as defined in the Bylaws and any Resolution of the Board of Directors. Such responsibilities and obligations may include, but are not limited to, the following:

1. Cooperate with the Authority in determining the cause of losses and in the settlement of claims;
2. Pay all premiums, assessments, penalties, interest, and other charges promptly to the Authority when due;
3. Provide the Authority with statistical and loss experience, data, and other information as may be necessary; and
4. Cooperate with and assist the Authority and any insurer, claims adjuster, or legal counsel retained by the Authority in matters relating to this Agreement, the Authority Bylaws, any other Governing Documents, and policies and procedures adopted by the Board.

POWERS RESERVED UNTO THE MEMBERSHIP

The Member Entities retain the following powers:

1. The designation of the Board of Directors as specified in ARTICLE IX; and
2. Approval of an amendment to this Agreement as specified in ARTICLE XXIV.

ARTICLE IX

BOARD OF DIRECTORS

There shall be a Board of Directors to govern the affairs of the Authority. The Board shall be comprised of one director, and one alternate director, from each Class A Member Entity who shall have the authority to bind the Member Entity on any and all matters relating to the business of the

Authority. Each director has one vote. The alternate director may cast a vote as a member of the Board of Directors only in the absence of the director. Each director shall be the chief administrative officer of each Member Entity or his or her designee. The alternate director shall be appointed by and serve at the pleasure of that Member Entity's director.

POWERS RESERVED UNTO THE BOARD

The powers of the Board are the powers of the Authority not specifically reserved to the Member Entities by this Agreement. The Board has authority to delegate its powers and authority. However, the Board shall retain unto itself the power to change the Bylaws, to expel a member by a two-thirds vote, and to establish a Program.

ARTICLE X

COMMITTEES

EXECUTIVE COMMITTEE

The Board may create an Executive Committee comprised of members of the Board and delegate one or more of its powers to the Executive Committee except those powers not delegable. An appointment to the Executive Committee, if any, is by an election of the Board of Directors.

OTHER COMMITTEES

Other committees may be created by, or in accordance with, the procedures described in the Bylaws.

ARTICLE XI

BOARD AND COMMITTEE MEETINGS

The Board shall hold at least one regular meeting each year. The Board shall fix the date, hour, and place at which each regular meeting is to be held. A special meeting may be called upon written request by the President or at least one-third of the Board members.

Each regular, adjourned regular, and special meeting of the Board, the Executive Committee, or any other Standing Committee shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act (Section 54950 et. seq. of the Government Code).

The Secretary shall keep or have kept minutes of each regular or special meeting of the Board and any Committee. As soon as possible after each meeting, the Secretary shall have a copy of those

minutes forwarded to each member of the Board.

No business may be transacted by the Board or a Committee without a quorum of members being present. A quorum consists of a majority of the members.

ARTICLE XII

OFFICERS & EMPLOYEES

The Officers of the Authority are the President, Vice President, Administrator, Secretary, Treasurer, and others as may be declared in the Bylaws or Resolution of the Board. The Officers are elected or appointed in accordance with the procedures described in the Bylaws. The Officers shall have the authorities and responsibilities as defined in the Bylaws.

The Board may appoint such officers and employees and may contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

Any Member Entity which provides or performs assigned duties pursuant to this ARTICLE may be reimbursed by the Authority for services rendered on the Authority's behalf.

ARTICLE XIII

ANNUAL AUDITS AND AUDIT REPORTS

The Treasurer shall cause an annual financial audit to be made by an independent Certified Public Accountant with respect to all Authority receipts, disbursements, other transactions and entries into the books. A report of the financial audit shall be filed as a public record with each Member Entity. The audit shall be conducted in accordance with Government Code Section 6505 and filed with the County Auditor or others as required by the laws of California. The Authority shall pay the cost of the financial audit and charge the cost against the Member Entities in the same manner as other administrative costs.

ARTICLE XIV

INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES

The members of the Board of Directors and the officers and employees of the Authority shall act in good faith and in the best interests of the Authority in the performance of their duties hereunder. The members of the Board of Directors and the officers and employees of the Authority shall be liable for any act or omission within the scope of their office or employment by the Authority as a public entity only in the event that they act or fail to act because of actual fraud, corruption, or actual malice or willfully fail or refuse to conduct the defense of a claim or action in

good faith or to reasonably cooperate in good faith in the defense conducted by the Authority. No member of the Board shall be liable for any action taken or omitted by any other member of the Board. No member of the Board, officer, or employee shall be required to deposit premium on a bond or other security to guarantee the faithful performance of his or her duties hereunder, although the Authority may provide such bonds. Funds of the Authority shall be used to defend and to indemnify members of the Board, officers, and employees of the Authority for any act or omission pursuant to the provisions of Government Code Sections 910 to 996.6. The Authority may purchase insurance to provide coverage for acts or omissions of directors, officers, and employees.

The Authority shall indemnify, protect, defend, and hold harmless each and all of the Member Entities, and their officers and employees, for and from any and all liability, claims, causes of action, damages, losses, judgments, costs, or expenses (including attorney's fees) resulting from an injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement by the Authority, by one or more of the Member Entities, or any of their officers, employees, agents, or independent contractors. This indemnification provision is intended to supplant and supersede the pro rata right of contribution formula set forth in Government Code Section 895.6.

ARTICLE XV

SELF-INDEMNIFICATION AMONG THE MEMBER ENTITIES

Section 895.2 of the California Government Code imposes certain tort liability jointly upon entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the Member Entities hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the California Government Code, each assumes the full liability imposed upon it for any of its officers, agents, or employees by law for injuries caused by a negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve this purpose, each Member Entity indemnifies and holds harmless all other Member Entities for any loss, cost, or expense that may be imposed upon such other Member Entities solely by virtue of Section 895.2 of the California Code.

ARTICLE XVI

NEW MEMBERS

A public agency may be admitted as a Member Entity only upon a two-thirds vote of the Board of Directors. The application of any Member Entity to participate in any Program shall be determined under the Program's Governing Documents.

Each applicant for membership shall pay all fees and expenses set by the Board.

ARTICLE XVII

WITHDRAWAL

A Member Entity may not withdraw from the Authority for a period of three (3) consecutive fiscal years after commencement of membership. After the initial three (3) year non-cancelable period, a Member Entity may withdraw from the Authority only at the end of a fiscal year, provided it has given the Authority at least six months written notice of its intent to withdraw. A notice of intent to withdraw shall be final and irreversible upon its receipt by the Authority unless the Board authorizes it to be rescinded by the Member Entity.

The withdrawal of a Member Entity from any class of membership in the Authority shall not terminate its responsibility, as defined by any of the Governing Documents of the Authority, to contribute its share of premiums or funds to any fund or coverage program created by the Authority in which the withdrawing Member Entity has participated.

ARTICLE XVIII

EXPULSION

The Authority may expel a Member Entity from any class of membership in the Authority by a two-thirds vote of the Board of Directors for a breach of any of the Governing Documents determined by the Board to be a material breach. Such expulsion shall automatically, and simultaneously, terminate the Member Entity's participation in any and all Programs in which it may be a Program participant. The procedure for hearing and notice of expulsion of a Member Entity shall be as provided in the Authority Bylaws.

The expulsion procedures from any Program shall be defined in the Governing Documents for that Program.

The expulsion of a Member Entity from any class of membership in the Authority shall not terminate its responsibility, as defined by any of the Governing Documents of the Authority, to contribute its share of premiums or funds to any fund or coverage Program created by the Authority in which the expelled Member Entity has participated.

ARTICLE XIX

TERMINATION AND DISTRIBUTION

This Agreement may only be terminated by the written consent of all Member Entities. Thereafter, this Agreement may be terminated by the written consent of two-thirds of the Member Entities. However, this Agreement and the Authority continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligations and affairs of the Authority.

Upon termination of this Agreement, the assets of the Authority shall be distributed and apportioned among the Member Entities that have been participants in its Programs, including those Member Entities which previously withdrew or were expelled pursuant to ARTICLES XVII and XVIII of this Agreement, as provided in the Authority Bylaws.

ARTICLE XX

NOTICES

Notice to each Member Entity under this Agreement is sufficient if mailed to its respective address on file with the Authority.

ARTICLE XXI

BINDING EFFECT OF BYLAWS AND OTHER GOVERNING DOCUMENTS

Each party to this Agreement by the execution hereof agrees to be bound by and to comply with all of the terms and conditions of the Governing Documents, and any Resolution adopted by the Board of Directors as they now exist or may hereafter be adopted or amended.

ARTICLE XXII

ENFORCEMENT

The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted by the Authority to enforce any term of any of the Governing Documents of any Program or otherwise against any Member Entity, the prevailing party shall be entitled to reasonable attorney fees and costs incurred because of said action, in addition to other appropriate relief.

ARTICLE XXIII

PROHIBITION AGAINST ASSIGNMENT

No Member Entity may assign a right, claim, or interest it may have under this Agreement. No creditor, assignee, or third party beneficiary of a Member Entity has a right, claim, or title to any part, share, interest, fund, premium, or asset of the Authority.

ARTICLE XXIV

AMENDMENTS

This Agreement may be amended if at least 85% of the total Class A Member Entities vote in

favor of the amendment. A proposed amendment must be submitted to each Member Entity at least thirty (30) days in advance of the date when the Member Entity considers it. An amendment is to be effective immediately unless otherwise designated. Appendix A to the Agreement may be amended to correctly list current Member Entities without separate action by the Member Entities or the Board.

ARTICLE XXV

SEVERABILITY

If a portion, term, condition, or provision of this Agreement is determined by a court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions is not affected.

In witness whereof, the following parties have each executed this Agreement as amended on the dates set forth below and acknowledge their Class A membership to the Authority:

Date: _____	Entity:
	Title:
Date: _____	Entity:
	Title:
Date: _____	Entity:
	Title:

In witness whereof, the following parties have each executed this Agreement as amended on the dates set forth below and acknowledge their Class B membership to the Authority:

Date: _____	Entity:

	Title:

APPENDIX A

MEMBER ENTITIES AND MEMBER CLASS

City of Albany	Class A
City of Berkeley	Class A
City of Brisbane	Class A
Central Marin Police Authority	Class A
City of Emeryville	Class A
Town of Fairfax	Class A
City of Larkspur	Class A
City of Los Altos	Class A
City of Menlo Park	Class A
City of Mill Valley	Class A
City of Monte Sereno	Class A
City of Novato	Class A
City of Piedmont	Class A
City of Pleasanton	Class A
City of Redwood City	Class A
Town of San Anselmo	Class A
Town of Tiburon	Class B
City of Sausalito	Class A
City of Union City	Class A